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7

8 BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
BOARD OF PODIATRIC MEDICINE  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA  
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11 In the Matter of the Accusation	)	Case No. <u>D-4921</u>
12 Against:	)	
13 DAVID PATRICK DEVLIN, D.P.M.	)	ACCUSATION
14 711 N. Alvarado, Suite 107	)	
15 Los Angeles CA 90057	)	
16 Podiatric Physician	)	
17 Certificate No. E358,	)	
18 Respondent.	)	

19 Complainant alleges that:

20 PARTIES

21 1. He is James Rathlesberger, Executive Officer of the  
22 Board of Podiatric Medicine of the State of California  
(hereinafter, the "Board") and makes and files this Accusation  
solely in his official capacity.

23 2. On or about July 11, 1989, the Board issued License  
24 No. E358 to David Patrick Devlin, D.P.M. (hereinafter, the  
25 "respondent") to practice podiatric medicine in this state. Said  
26 license is currently in full force and effect.  
27

JURISDICTION

3. Pursuant to Business & Professions Code sections 2222 and 2497(a)<sup>1/</sup>, the Board may suspend, revoke, or impose probation on any certificate to practice podiatric medicine on a licensee found guilty under the Medical Practice Act.

4. Section 2234 of the Code provides that the Board shall take action against any licensee charged with unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

5. Section 2472 of the Code provides that the certificate to practice podiatric medicine authorizes the holder to practice podiatric medicine and that "podiatric medicine" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle

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1. Except as otherwise provided, all statutory references are to the Business and Professions Code.

1 and tendons that insert into the foot and the nonsurgical  
2 treatment of the muscles and tendons of the leg governing the  
3 functions of the foot.

4           6. Section 2472 of the Code further provides that no  
5 podiatrist shall administer an anesthetic other than local.

6           7. Section 2052 of the Code provides that any person  
7 who practices or attempts to practice, any system or mode of  
8 treating the sick or afflicted in this state, or who diagnoses,  
9 treats, operates for, or prescribes for any ailment, blemish,  
10 deformity, disease, disfigurement, disorder, injury, or other  
11 physical or mental condition of any person, without having at the  
12 time of so doing a valid, unrevoked, or unsuspended certificate  
13 as provided by the Medical Practice Act (sections 2000 et.seq.),  
14 or without being authorized to perform such act pursuant to a  
15 certificate obtained in accordance with some other provision of  
16 law, is guilty of a misdemeanor.

17           8. Section 2238 of the Code provides that violation of  
18 any federal or state statute or regulation regulating dangerous  
19 drugs or controlled substances constitutes unprofessional  
20 conduct.

21           9. Section 2239(a) of the Code provides that the use  
22 or prescribing for or administering to himself or herself, of any  
23 controlled substance; or the use of any of dangerous drugs, to  
24 the extent, or in such manner as to be dangerous or injurious to  
25 the licensee, or to any other person or to the public,  
26 constitutes unprofessional conduct.

27           10. Section 2242(a) of the Code provides that it is

1 unprofessional conduct to prescribe, dispense or furnish a  
2 dangerous drug without a good faith prior examination and medical  
3 indication therefor.

4           11. Section 2261 of the Code provides that knowingly  
5 making or signing any certificate or other document directly or  
6 indirectly related to the practice of medicine or podiatry which  
7 falsely represents the existence or nonexistence of a state of  
8 facts, constitutes unprofessional conduct.

9           12. Health and Safety Code section 11152 provides that  
10 no person shall write, issue, fill, compound or dispense a  
11 prescription that does not conform to the Controlled Substances  
12 Act (Health and Safety Code sections 11000 et.seq.).

13           13. Health and Safety Code section 11153 provides, in  
14 pertinent part, that a prescription for a controlled substance  
15 shall only be issued for a legitimate medical purpose by an  
16 individual practitioner acting in the usual course of his or her  
17 professional practice.

18           14. Health and Safety Code section 11173(b) provides  
19 that no person shall make a false statement in any prescription,  
20 order, report, or record required by Health and Safety Code  
21 section 11000 et.seq..

22           15. Health and Safety Code section 11157 provides that  
23 no person shall issue a prescription that is false or fictitious  
24 in any respect.

25           16. Health and Safety Code section 11170 provides that  
26 no person shall prescribe, administer, or furnish a controlled  
27 substances for himself.

FIRST CAUSE OF ACTION

17. Respondent is subject to disciplinary action under the authority of sections 2234 and 2238 of the Code in that he engaged in unprofessional conduct by violating sections 11152 and 11153 of the Health & Safety Code regulating dangerous drugs or controlled substances by issuing a prescription for a controlled substance for other than a legitimate medical purpose. The facts and circumstances are as follows:

A. Between about January 1990 and about July 1991, respondent was employed by and associated with Dr. William Pagliano, D.P.M., at Dr. Pagliano's Los Angeles and Newhall offices.

B. On or about the following dates respondent issued the following prescriptions:

<u>Date</u>	<u>Name</u>	<u>Drug (and Strength/Amount)</u>
(the following were filled at Horton & Converse Pharmacy)		
4-27-90*	for office use	20 hydrocodone w/acetaminophen
7-26-90	for office use	15 Vicodin
8-6-90	for office use	12 Vicodin
8-29-90	for office use	10 Valium 10mg.
9-6-90	for office use	12 hydrocodone w/acetaminophen
9-27-90	for office use	20 hydrocodone w/acetaminophen
10-12-90	for office use	20 hydrocodone w/acetaminophen
10-22-90	respondent	15 hydrocodone w/acetaminophen
10-26-90	for office use	10 diazepam 10mg.
"	"	25 hydrocodone w/acetaminophen
"	"	25 Vicodin
10-30-90	C.D.	20 hydrocodone
11-26-90	for office use	25 Vicodin
"	"	10 Valium 10mg.
12-6-90	for office use	25 Synalgos-dc
1-2-91	C.D.	30 hydrocodone
1-14-91	C.D.	20 hydrocodone
"	C.D.	50 Valium 10mg.
(the following were filled at Medical Square Pharmacy)		
no date*	respondent	30 Vicodin
" *	respondent	15 Valium 10mg

1	" *	respondent	20 Vicodin
	" *	respondent	10 Valium 10mg
2	" *	respondent	30 Vicodin
	" *	respondent	20 Valium 10mg
3	" *	respondent	20 Lortab 5mg.
	"	respondent	20 Lortab 2.5mg
4	"	respondent	30 Lorcet Plus
	5-29-91*	respondent	40 Lorcet Plus
5	(the following were filled at Valencia Pharmacy)		
6	10-30-90	respondent	10 Vicodin
	1-29-91*	respondent	5 Valium 10mg
7	" *	respondent	10 Vicodin
	2-12-91	respondent	10 Soma cpd. w/codeine
8	6-25-91*	respondent	20 Lorcet Plus

9 All prescriptions marked "\*" were issued in the name of Dr.  
10 Pagliano

11  
12 C. At all times pertinent herein, each of the drugs  
13 set out hereinabove was a Schedule III narcotic  
14 controlled substance pursuant to Health and Safety Code  
15 section 11056 and 21 C.F.R. section 1308.13, except  
16 Valium and diazepam, which were Schedule IV non-  
17 narcotic controlled substances pursuant to Health and  
18 Safety Code section 11057 and 21 C.F.R. section  
19 1308.14.

20 D. Each of the above prescriptions, including all  
21 those purportedly authorized by Dr. Pagliano, were  
22 issued by respondent, and each such prescription,  
23 including those issued in the name of C.D. and those  
24 issued "for office use" was intended for respondent's  
25 own use.

26 E. As to each of the above prescriptions, respondent  
27 prescribed the controlled substance for himself.

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1 and circumstances are as follows:

2 A. Complainant incorporates by reference paragraphs 17  
3 and 18 as though fully set forth herein.

4 B. Each of the above prescriptions purportedly  
5 authorized by Dr. Pagliano was false and fraudulent in  
6 that respondent, without Dr. Pagliano's authorization  
7 or knowledge, issued the order.

8 C. The prescription for S.O. was false and fraudulent  
9 in that respondent intended to take 12 Vicodin for his  
10 own use and did so, repaying S.O. for half the cost of  
11 the prescription.

12 FOURTH CAUSE OF ACTION

13 20. Respondent is subject to disciplinary action under  
14 the authority of sections 2234 and 2238 of the Code in that he  
15 engaged in unprofessional conduct by violating sections 11152 and  
16 11170 of the Health & Safety Code regulating dangerous drugs or  
17 controlled substances in that he prescribed, administered, or  
18 furnished a controlled substance for himself.

19 A. Complainant incorporates by reference subparagraphs  
20 17A, 17B, 17C, 17D and 17E as though fully set forth  
21 herein.

22 FIFTH CAUSE OF ACTION

23 21. Respondent is subject to disciplinary action under  
24 the authority of sections 2234(e) and 2261 of the Code in that he  
25 engaged in unprofessional conduct by knowingly making or signing  
26 any certificate or other document directly or indirectly related  
27 to the practice of podiatry which falsely represents the



1 existence or nonexistence of a state of facts. The facts and  
2 circumstances are as follows:

3 A. Complainant incorporates by reference subparagraphs  
4 19A, 19B and 19C as though fully set forth herein.

5 SIXTH CAUSE OF ACTION

6 22. Respondent is subject to disciplinary action under  
7 the authority of section 2234(e) of the Code in that he engaged  
8 in unprofessional conduct by violating sections 11152 and 11157  
9 of the Health & Safety Code regulating dangerous drugs or  
10 controlled substances in that he issued a prescription that was  
11 false or fictitious. The facts and circumstances are as follows:

12 A. Complainant incorporates by reference subparagraphs  
13 19A, 19B and 19C as though fully set forth herein.

14 SEVENTH CAUSE OF ACTION

15 23. Respondent is subject to disciplinary action under  
16 the authority of sections 2234 and 2239(a) of the Code in that he  
17 engaged in unprofessional conduct by the unlawful use or  
18 prescribing of controlled substances in such manner as to be  
19 dangerous or injurious to himself or another. The facts and  
20 circumstances are as follows:

21 A. Complainant incorporates by reference subparagraphs  
22 19A, 19B and 19C as though fully set forth herein.

23 B. None of the above prescriptions was issued in the  
24 usual course of respondent's professional practice.

25 EIGHTH CAUSE OF ACTION

26 24. Respondent is subject to disciplinary action under  
27 the authority of sections 2234 and 2242(a) of the Code in that he

1 engaged in unprofessional conduct by prescribing, dispensing or  
2 furnishing a dangerous drug without a good faith prior  
3 examination and medical indication therefor. The facts and  
4 circumstances are as follows:

5 A. Complainant incorporates by reference subparagraphs  
6 19A, 19B and 19C as though fully set forth herein.

7 NINTH CAUSE OF ACTION

8 25. Respondent is subject to disciplinary action under  
9 the authority of sections 2234 and 2238 of the Code in that he  
10 engaged in unprofessional conduct by violating sections 11152 and  
11 11173(b) of the Health & Safety Code regulating dangerous drugs  
12 or controlled substances by making a false statement in any  
13 prescription. The facts and circumstances are as follows:

14 A. Complainant incorporates by reference subparagraphs  
15 19A, 19B and 19C as though fully set forth herein.

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18 PRAYER

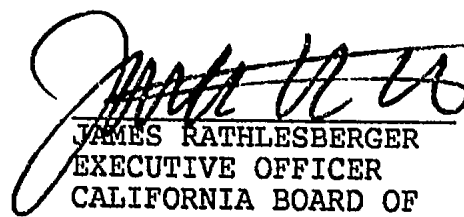
19 WHEREFORE, complainant prays that a hearing be held on  
20 the matters alleged hereinabove and, following said hearing, the  
21 Board issue a decision:

- 22 1. Revoking or suspending Certificate No. E358,  
23 heretofore issued to respondent;  
24 2. Ordering respondent to pay the board the actual and  
25 reasonable costs of the investigation and prosecution  
26 of this case; and  
27 3. Taking such other and further action as the board

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may deem proper.

DATED: September 3, 1992

  
JAMES RATHLESBERGER  
EXECUTIVE OFFICER  
CALIFORNIA BOARD OF  
PODIATRIC MEDICINE

Complainant

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
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MEDICAL BOARD OF CALIFORNIA  
BOARD OF PODIATRIC MEDICINE  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA  
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11 In the Matter of the Accusation )  
Against: )

OAH No.

12 DAVID PATRICK DEVLIN, D.P.M. )  
13 711 N. Alvarado, Suite 107 )  
14 Los Angeles, California 90026 )

CASE No. D-4921

AMENDED &  
SUPPLEMENTAL  
ACCUSATION

15 Podiatric Physician )  
16 Certificate No. E-358, )

Respondent. )

17  
18 The Complainant alleges that:

19 PARTIES

20 26. Complainant is James Rathlesberger, Executive  
21 Officer of the Board of Podiatric Medicine of the State of  
22 California (hereinafter referred to as "the Board"), and brings  
23 this Amended and Supplemental Accusation solely in his official  
24 capacity.

25 27. On or about July 11, 1989, the Board issued  
26 License No. E-358 to David Patrick Devlin, D.P.M. (hereinafter  
27 referred to as "the Respondent") and at all times herein  
mentioned, said license has been in full force and effect. On or

1 about September 3, 1992, an Accusation was filed in Case No. D-  
2 4921 (this Accusation is incorporated by reference as though  
3 fully set herein). No hearing on said Accusation has taken  
4 place.

#### 5 JURISDICTION

6 28. This Amended & Supplemental Accusation is brought  
7 under the authority of the following sections of the California  
8 Business & Professions Code (hereinafter referred to as "the  
9 Code"):

10 29. Sections 2222 and 2497(a) of the Code provide the  
11 Board may take action against all persons guilty of violating the  
12 Medical Practice Act.

13 30. Section 2227 of the Code provides that the Board  
14 may revoke, suspend for a period not to exceed one year, or place  
15 on probation, the license of any licensee who has been found  
16 guilty under the Medical Practice Act.

17 31. Section 2230 of the Code provides that all  
18 proceedings against a licensee for unprofessional conduct or  
19 cause shall be conducted in accordance with the Administrative  
20 Procedure Act (Chapter 5 (commencing with Section 11500) of Part  
21 1 of Division 3 of Title 2 of the Government Code).

22 32. Section 11507 of the Government Code (the  
23 Administrative Procedure Act) provides that at any time before  
24 the matter is submitted for decision the agency may file or  
25 permit the filing of an amended or supplemental accusation.

26 33. Sections 490 and 2236(a) of the Code provide that  
27 the Board shall take action against any licensee for conviction

1 of a crime substantially related to the qualifications,  
2 functions, or duties of that license.

3 34. Section 2237(a) provides that the conviction of a  
4 charge of violating any federal or state statute or regulation  
5 regulating dangerous drugs or controlled substances constitutes  
6 unprofessional conduct.

7 TENTH CAUSE OF ACTION

8 35. Respondent is further subject to disciplinary  
9 action pursuant to Sections 490, 2236(a) and 2237(a) of the Code  
10 in that he engaged in unprofessional conduct by suffering a  
11 criminal conviction for conduct violating a state statute  
12 regulating dangerous drugs or controlled substances. The facts  
13 and circumstances are as follows:

14 A. Complainant incorporates by reference paragraph 19  
15 as though fully set forth herein.

16 B. On or about April 29, 1992, in Case No. BA050821,  
17 People v. David P. Devlin, Los Angeles Superior Court,  
18 respondent was convicted, following a plea of nolo  
19 contendere on April 1, 1992, in Los Angeles Municipal  
20 Court, of two counts of violating Business and  
21 Professions Code section 4390, a felony, to wit,  
22 uttering a forged prescription. Respondent was  
23 sentenced to three years probation on condition, inter  
24 alia, of 2 days in jail, restitution fine of \$2,000,  
25 and undertake a plan of drug abuse.

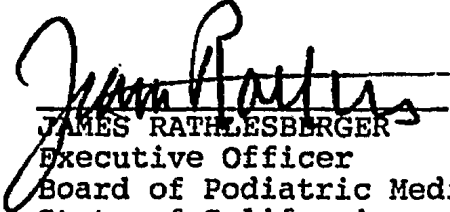
26 PRAYER

27 WHEREFORE, Complainant prays a hearing be held on the

1 matters alleged herein, and, following said hearing, the Board  
2 issue a decision:

- 3 1. Revoking or suspending Podiatric Physician Certifi-  
4 cate No. E-358, heretofore issued to David P. Devlin,  
5 D.P.M.;
- 6 2. Ordering Respondent to pay the Board the actual and  
7 reasonable costs of the investigation and prosecution  
8 of this matter; and
- 9 3. Taking such other and further action as the  
10 Board may deem proper.

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12 DATED: October 29, 1992.

  
13 JAMES RATHLESBERGER  
14 Executive Officer  
15 Board of Podiatric Medicine  
16 State of California

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Complainant